HIGH COURT OF CHHATTISGARH: BILASPUR

WRIT PETITION (S) NO. 226 OF 2007

PETITIONER DEFENDANT	Smt. Punai Bai, aged 56 years, W/o. Bhagoli Satnami, R/o. Village - Kaurinbhata, Tahsil & District Rajnandgaon, CG.

Versus

RESPONDENTS PLAINTIFF	1)	Babulal Soni, S/o. Banshilal Soni, aged 58 years, R/o. G.E. Road, Near Soni Saw Mill, Rajnandgaon, CG.
	2)	State of Chhattisgarh, through Collector, Rajnandgaon, Dist. Rajnandgaon, CG.

SB: HON'BLE SHRI JUSTICE SATISH K. AGNIHOTRI.

PRESENT:

Shri Rajeev Shrivastava, counsel for the petitioner.
Shri Anoop Mazumdar, counsel for respondent No.1.

ORDER
(Passed on 13th April 2007)

1. By this petition filed under Article 227 of the Constitution of India, the petitioner impugns the order dated 08-12-2006 (Annexure P/5) passed by the District Judge, Rajnandgaon, in Civil Suit No.2-A/2005, whereunder the application filed for amendment of the written statement was rejected.

2. The necessary facts in nutshell are that the respondent No.1/plaintiff filed a suit for specific performance of the contract against the petitioner/defendant stating that the petitioner entered into an agreement for sale of land bearing khasra No.296, 365 admeasuring 1.02 acres and 0.78 acres situated at village Kaurinbhata, Tahsil & Dist. Rajnandgaon on 17-3-2003. The petitioner/respondent filed written statement on 12-5-2005,

thereafter the petitioner moved an application under Order 6, Rule 17 of the Code of Civil Procedure, 1908 (for short, "the Code") on 13-11-2006 for making certain amendment in contents of the written statement.

3. The District Judge, Rajnandgaon, after hearing both the parties came to the conclusion that plaintiff/respondent No.1 has strongly objected to the amendment in the written statement as the defendant/petitioner is trying to bring completely new facts in substitution of the facts already stated in the written statement filed on 12-5-2005 (Annexure P/2). The District Judge came to the following conclusion while rejecting the application under Order 6 Rule 17 of the Code, filed by the petitioner.

प्रतिवादी द्वारा जवाबदावा दिनांक 12.5.2005 (डेढ़ वर्ष पूर्व) को प्रस्तुत किया जा चुका है जिसकी कंडिका–2 में यह अभिकथन किया गया है कि पक्षकारों के मध्य 2.52 एकड़ कृषि भूमि का सौदा किया गया था जिसमें से 1,05,000/– पूर्व में दी गई राशि को काट कर कुल बिकी राशि 3,51,000/– में से शेष राशि 2,46,000/– दिया जाना शेष था।

उक्त कंडिका के परिशीलन से यह परिलक्षित होता है कि प्रतिवादी व वादी के मध्य दो भूमियों के पृथक सौदा हुआ था। वादी द्वारा प्रस्तुत इकरारनामा के अनुसार 4,05,000/– में 1.80 एकड़ भूमि विकय का सौदा दिनांक 17.3.2003 को किया गया था। उक्त परिस्थितियों में जवाबदावा प्रस्तुती से डेढ़ वर्ष पश्चात् प्रतिवादी के द्वारा संपूर्णतः नए तथ्य अभिलिखित किए जाने का निवेदन किया गया है जिसके पूर्व में न किए जाने के संबंध में आवेदन में दर्शित कारण स्वीकार योग्य नहीं है। निश्चित तौर पर प्रतिवादी अपना बचाव परिवर्तित कर रही है जिसकी अनुमति इस स्थिति पर असे दिया जाना न्यायोचित नहीं है।

4. The respondent in his return has stated that the trial of the suit has already commenced and the case was at the stage of cross examination of the plaintiff's witnesses.

5. Learned counsel appearing for respondent No.1 relied on proviso to Rule 17 of Order 6 of the Code, submits that no application for amendment

shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party should not have raised the matter before the commencement of trial, the petitioner could not raise the matter before commencement of trial.

6. Hon'ble the Supreme Court in the matter of **Baldev Singh and others Vs. Manohar Singh and another**[1] while considering the scope of amendment under provisions of Order 6, Rule 17 of the Code, held as under:

> "8. It is well settled by various decisions of this Court as well as the High Courts in India that courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in *Ma Shwe Mya v. Maung Mo Hnaung* in which the Privy Council observed:(IA pp. 216-17).
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> "All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment *must be enjoyed and should always be liberally exercised*, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit." (emphasis supplied).

7. Applying the settled principle of law as above stated to the facts of the case on hand, the prayer was rejected on the ground that serious injustice or irreparable loss was likely to be caused to the other side by change of the substantial content of the written statement. Thus, there is no warrant to interfere with the impugned order (Annexure P/5) in exercise of its supervisory jurisdiction under Article 227of the Constitution of India.

8. As a result, in view of the aforementioned reasons, this petition is dismissed. No order as to costs.

Sd/-
Satish K.Agnihotri
Judge

Raju

[1] (2006) 6 SCC 498